

Response Under 37 C.F.R. §41.37
Appellant's Brief
Application No. 10/777,798
Paper Dated: November 21, 2008
In Reply to USPTO Correspondence of November 14, 2008
Docket No. 1913A1 (Attorney Docket 3152-080249)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No. : 10/777,798 Confirmation No. 5845
Appellant : MILDRED KARKOFF
Filed : February 12, 2004
Title : METHODS AND SYSTEMS FOR
ILLUSTRATING AND COMPARING
PRODUCT DATA
Group Art Unit : 3625
Examiner : Jason B. Dunham
Customer No. : 28289

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This Appeal Brief is being submitted in response to the Notification of Non-Compliant Appeal Brief dated November 14, 2008 and in support of the Notice of Appeal electronically filed August 15, 2008. The Notice of Appeal appeals the final rejections of claims 1-8, 11-18, 20-24, 27, 29-31, 34-35, 37-39, 42, 43, and 45-49.

The headings used hereinafter and the subject matter set forth under each heading are in accordance with 37 C.F.R. §41.37.

I hereby certify that this correspondence is being electronically submitted to the United States Patent and Trademark Office on November 21, 2008.

11/21/2008

Date

Bruce L. White

Signature

Bruce L. White

Typed Name of Person Signing Certificate

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I

REAL PARTY IN INTEREST

The real party in interest in the Appeal is PPG Industries Ohio, Inc., having acquired rights by way of an Assignment recorded in the United States Patent and Trademark Office at Reel 015543, Frame 0775 on July 6, 2004.

II

RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences known to the Appellant, the Appellant's legal representative, or the Assignee of the above-identified application which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

III

STATUS OF CLAIMS

Claims 1-8, 11-18, 20-24, 27, 29-31, 34-35, 37-39, 42-43, and 45-49 are rejected and appealed. Claims 9, 10, 19, 25, 26, 28, 32, 33, 36, 40, 41, and 44 are cancelled.

IV

STATUS OF AMENDMENTS

No Amendment has been filed in response to the June 25, 2008 final Office Action.

V

SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment of the invention, as set forth in claim 1, Appellant has developed a computer based system for illustrating product data comprising:

(a) an input interface wherein a user selects one or more products (see paragraph [0009]);

(b) at least one database comprising product data of the products (see paragraph [0009]) ;

(c) a program in communication with the input interface and the at least one database, wherein the program retrieves selected product data for products selected by the user (see paragraph [0009] ; and

(d) an output interface in communication with the program, which outputs and illustrates at least some of the selected product data retrieved from the database (see paragraph [0009]),

wherein the computer based system is interactive with the user, such that the user may adjust at least some of the product data retrieved from the database and illustrated in the output interface to generate additional product data, wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one of more of a code, a description, a price and a package size (paragraph [0061], lines 1-7 and paragraph [0062], lines 1-5).

In another embodiment of the invention, as set forth in claim 21, Appellant has developed a computer-generated report illustrating the contents of an output interface, wherein the report comprises selected product data of one or more products, wherein the product data is retrieved from at least one database comprising product data of one or more products and outputted via the output interface, and wherein at least some of the product data retrieved from the database and illustrated in the output interface is adjustable in the output interface to generate additional product data, wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one or more of a code, a description, a price, and a package size (see paragraph [0010]).

In a further embodiment of the invention, as set forth in claim 29, Appellant has developed a computer-based method for generating a report comprising:

(a) receiving a selection of one or more products from a user via an input interface (see paragraph [0010]);

(b) retrieving product data of the one or more products from at least one database comprising product data of one or more products (see paragraph [0010]);

(c) outputting and illustrating selected product data of the one or more products in an output interface (see paragraph [0010]),

wherein at least some of the illustrated product data retrieved from the database and illustrated in the output interface is adjustable by the user in the output interface to generate additional product data (see paragraph [0065]), wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one or more of a code, a description, a price and a package size (see paragraph [0061], lines 1-7 and paragraph [0062], line 1-5); and

(d) generating a report that illustrates the contents of the output interface (see Fig. 4).

In yet a further embodiment of the invention, as set forth in claim 38, Appellant has developed a method of using a computer to compare product data, the method comprising the steps of:

(a) using a computer-based input interface to input a selection of at least two products to be compared (see paragraph [0012]); and

(b) reviewing an output interface illustrating selected product data of the at least two products, wherein the selected product data is retrieved from at least one database comprising product data of at least two products and outputted via the output interface (see paragraph [0012]),

wherein at least some of the illustrated selected product data retrieved from at least one database is adjustable by the user in the output interface (see paragraph [0012]), wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one or more of a code, a description, a price and a package size (see paragraph [0061], lines 1-7 and paragraph [0062], line 1-5).

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VI

GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

I. Whether claims 1-4, 6-8, 12-18, 20-24, 29-31, 35, 37-39, 43, and 45-49 are obvious under 35 U.S.C. §103(a) over United States Publication No. 2001/0037255 to Tambay in view of United States Patent No. 5,974,388 to Durham.

II. Whether claims 5, 11, 27, 34, and 42 are obvious under 35 U.S.C. §103(a) over United States Publication No. 2001/0037255 to Tambay in view of United States Patent No. 5,974,388 to Durham in view of United States Patent No. 6,959,284 to Howes.

VII

ARGUMENT

Each issue presented for review is addressed herein under the appropriate heading.

I. Rejection of claims 1-4, 6-8, 12-18, 20-24, 29-31, 35, 37-39, 43, and 45-49 under 35 U.S.C. §103(a).

Claims 1-4, 6-8, 12-18, 20-24, 29-31, 35, 37-39, 43, and 45-49 stand rejected under 35 U.S.C. §103(a) for obviousness over United States Publication No. 2001/0037255 to Tambay in view of United States Patent No. 5,974,388 to Durham. Reversal of this rejection is respectfully requested.

Obviousness of claims is based on underlying factual inquiries including (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; and (3) the level of ordinary skill in the relevant art. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). To hold a claim as obvious over prior art requires an articulate reason or rationale to support the obviousness rejection. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. _____, 127 S. Ct., 82 USPQ 2d 1385 (2007).

A. Claims 1-4, 7, 8, 12-18, 20, and 46.

Claims 1-4, 7, 8, 12-18, 20, and 46 of the present invention are directed to a product data illustrating system that allows a user to select one or more products as input data. A program then retrieves, from a database, product data related to the product(s) selected by the user and illustrates the data in an output interface. Some of the product data retrieved and illustrated can then be adjusted by the user to generate product data that is not stored in a database. Adjustable product data is defined to include component mixing ratios, ready to spray (RTS) price, and coating component data comprising one or more codes, a description, a price, and a package size.

With regards to the Tambay publication, Figure 2 of the Tambay publication is directed to the steps of a formulation calculator which allows a user to select the type of product to formulate (e.g., polyester resin) and to select the ingredients. Upon completion of the ingredients selection, the formulation calculator will display, to the user, a formulation combining the selected ingredients (see Tambay, paragraph [0119]). In the Tambay publication, according to generally accepted industry and product-specific standards, the user merely selects ingredients as input data. The final output is then a predetermined formulation containing the selected ingredients.

The Durham patent discloses a call center system for providing paint product related information to customers and recording customer telephone calls. More specifically, the system includes a memory device (18) storing a plurality of paint product information and a plurality of customer information. The Durham patent further includes an input device (12) for generating a customer request for information related to a selected one of the paint products and generating a call log graphic display (43) including the caller information (44), and for selecting a portion of the paint product information. In addition, the system includes a display device (14). In Fig. 14 of the Durham patent, input for various items, including substrate (88b), system (88c), and options (88d) and further providing a compatibility button (88m) for displaying a compatibility text box (88n) showing information as to a primer, a filler, a top coat, a clear coat, a mix ratio, a hardener, a thinner, and an additive relating to the substrate.

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The final Office Action of June 25, 2008 asserts that the Durham patent, specifically in the abstract and Fig. 14, discloses adjustable data fields as a customer choosing the type of substrate to be used and adjusting the product data accordingly (see page 7, paragraph 4, lines 3-5) and, therefore, it would have been obvious to modify the Tambay publication to include adjusting product data in order to adjust paints according to "customer wishes" (see page 3, paragraph [0005]).

To the extent that the Durham patent considers product data, it goes no further than simply displaying them. Fig. 14 of the Durham patent is a technical screen for displaying information about substrates stored in the database. The compatibility button (88m) of Fig. 14 only displays particular information regarding the substrate selected. In fact, the Durham patent clearly states the screen is for allowing the operator of the system to access technical information about substrates, for example, technical data sheets and material data sheets among others (see Durham, col. 9, lines 5-15.) The Durham patent fails to disclose adjusting these items in any capacity and there is no teaching or suggestion to do so. Therefore, the Specification and Figures of the Durham patent are lacking any disclosure to provide adjustable product data as part of this system and fail to disclose generating new product data not stored in the database.

The final Office Action also cited the Abstract of the Durham patent with regards to adjustable product data. However, the abstract fails to cure any deficiencies discussed hereinabove with regards to the Durham patent. There is no disclosure of adjustable product data. The abstract of the Durham patent relates only to the display of paint product information related to those selected paint products shown on the display and stored in the database and not enabled for adjustment. In fact, the Durham patent not only does not disclose adjustable product data but actually teaches away from doing so because it teaches a technical screen whereby information is only displayed from the database, for example, technical data sheets, material data sheets, safety data sheets, labels (see Durham, col. 9, lines 11-29), and temperature ranges (see Durham, col. 10, lines 10-11) are all static information similar to the compatibility information. Therefore, the rejection should

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be overturned because the cited passages do not support the Examiner's arguments.

As such, the references cited in the final Office Action, including the Tambay publication, fail to provide any reason to utilize adjustable product data and generated product data as in the present invention. There is no teaching or suggestion in the Tambay publication of any output formulation being adjusted by the user. To show obviousness, one would expect some showing of modifying a known formula in order to come up with a new formula. However, in the Tambay publication, no such showing is set forth. There is no teaching or suggestion to modify paint formulas, only a system of displaying substrates based on selectable existing formulas. Therefore, if "adjusting" as the term is used in the present invention were to take place in the Tambay publication, it would logically be included subsequent to the predetermined formulated product being delivered from the database; however, there is no subsequent step in the Tambay publication because the Tambay publication does not teach or suggest modifying, in any way, the formulations. Accordingly, the Tambay publication fails to consider adjusting product data or the further step of generating additional product data.

Further, Figure 4 of the Tambay publication is cited in the final Office Action to show selected product data in an output interface. Fig. 4 discloses an eCatalog hub for chemical additives and specialty products wherein a user may click on any section of the hub to identify a subset of products and services. Once the subset is selected, the user is then presented with an HTML page that allows the user to further refine the search (see paragraph [0128]). Appellant submits that further refining a search in the Tambay publication is equivalent to the user performing step (a) of claim 1 of the present invention which includes selecting products. Again, the steps after selection and refinement of selection is completed relating to adjusting the displayed results are missing from the Tambay publication and the Tambay publication provides no reason to adjust product data as in the present invention.

As set forth in MPEP §2143.03, to establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be considered in judging

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patentability of a claim against the prior art. Where claimed limitations are simply not present in the prior art, a *prima facie* rejection is not supported unless clear articulation is given as to why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. The final Office Action in the present case gives no reasoning as to the differences between the prior art and the present invention. Thus, since both the Durham patent and the Tambay publication fail to teach or suggest a system wherein a user can adjust product data retrieved from the database and illustrated in an output interface and both references further fail to teach or suggest generating additional product data relating to the product and, still further, in light of the absence of the several important features from the prior art, Appellant submits that a *prima facie* case of obviousness is not established. The pending claims 2-4, 7, 8, 12-18, and 20 depend from and further support the system of claim 1. As such, claims 2-4, 7, 8, 12-18, and 20 define over the prior art for at least these reasons.

B. Claim 6

Claim 6 depends from claim 1 and further requires that the system includes the user selecting at least two products. This feature of selecting two products to view simultaneously is not disclosed by the Tambay publication.

According to the final Office Action, the Tambay publication discloses, at paragraphs [0119] and [0128], a user selecting "at least two products". The cited portions relate to (1) formulating a single product; and (2) selecting a single product. Nowhere does the Tambay publication consider having multiple products selected on the display. Thus, no rationale is articulated for providing a system where the user selects multiple products. Accordingly, a *prima facie* case of obviousness is not established, and claim 6 further defines over the cited prior art.

C. Claims 21, 22, 24, and 47

Independent claim 21 is directed to a computer-generated report illustrating the contents of an output interface corresponding to a product data illustrating system that allows a user to select one or more products as input data. A program then retrieves, from a database, product data related to the product(s)

selected by the user and illustrates the data in an output interface. Some of the product data retrieved and illustrated can then be adjusted by the user to generate product data that is not stored in a database. Adjustable product data is defined to include component mixing ratios, ready to spray (RTS) price, and coating component data comprising one or more codes, a description, a price, and a package size. In the absence of any rationale for displaying adjustable product data on an output device in the cited references, there, likewise, is no reason for one skilled in the art to produce a computer-generated report from adjustable output product data. For the reasons stated hereinabove in relation to claim 1, Appellant respectfully requests reconsideration of independent claim 21. The pending claims 22, 24, and 47 further support the system of claim 21. As such, claims 22, 24, and 47 define over the prior art.

D. Claim 23

Claim 23 depends from claim 21 and further requires that the report includes information on at least two products. This feature of reporting on two products viewed simultaneously is not disclosed by the Tambay publication.

According to the final Office Action, the Tambay publication discloses, at paragraphs [0119] and [0128], a user selecting "at least two products". The cited portions relate to: 1) formulating a single product; and 2) selecting a single product. Nowhere does the Tambay publication consider a report on multiple products. Thus, no rationale is articulated for providing a report comprising multiple selected products. Accordingly, a *prima facie* case of obviousness is not established, and claim 23 further defines over the cited prior art.

E. Claims 29, 31, 35, 37, and 48

Independent claim 29 is directed to a computer-based method for generating a report illustrating the contents of an output interface corresponding to a product data illustrating system that allows a user to select one or more products as input data. A program then retrieves, from a database, product data related to the product(s) selected by the user and illustrates the data in an output interface. Some

of the product data retrieved and illustrated can then be adjusted by the user to generate product data that is not stored in a database. Adjustable product data is defined to include component mixing ratios, ready to spray (RTS) price, and coating component data comprising one or more codes, a description, a price, and a package size. For the reasons stated hereinabove in relation to claim 1, Appellant respectfully requests reconsideration of independent claim 29. The pending claims 31, 35, 37, and 48 further support the system of claim 29. As such, claims 31, 35, 37, and 48 define over the prior art.

F. Claim 30

Claim 30 depends from claim 29 and further requires that the system includes the user selecting at least two products. This feature of selecting two products to view simultaneously is not disclosed by the Tambay publication.

According to the final Office Action, the Tambay publication discloses, at paragraphs [0119] and [0128], a user selecting "at least two products". The cited portions relate to: 1) formulating a single product; and 2) selecting a single product. Nowhere does the Tambay publication consider having multiple products selected on the display. Thus, no rationale is articulated for providing a system where the user selects multiple products. Accordingly, a *prima facie* case of obviousness is not established, and claim 30 defines over the cited prior art.

G. Claims 38-39, 43, 45, and 49

Independent claim 38 recites a computer-based method for comparing product data using a database product data related to two products selected by the user and illustrates in an output interface. Some of the product data retrieved and illustrated can then be adjusted by the user to generate product data that is not stored in a database. Adjustable product data is defined to include component mixing ratios, ready to spray (RTS) price, and coating component data comprising one or more codes, a description, a price, and a package size. In addition to the reasons stated hereinabove with respect to claim 1, there is simply no consideration at all in either the Tambay publication or the Durham patent to compare product data of at least two products selected.

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The final Office Action does not address this element of claim 38. This is because the cited prior art does not consider such a feature.

As previously stated, the Durham patent is concerned with customer service regarding customer telephone calls. The Tambay publication is concerned with implementing a site that allows suppliers and manufacturers to build on-line communities. To the extent that both the cited prior art references provide service with regards to products, that alone does not provide a reason to one skilled in the art to design an output interface as in the present invention which provides a comparison tool for adjustable product data relating to two or more selected products. Without any rationale for including a comparison system for two or more products, claim 38 is non-obvious over the cited prior art. As such, Appellant respectfully requests reconsideration of independent claim 38. The pending claims 39, 43, 45, and 49 further support the system of claim 38. As such, claims 39, 43, 45, and 49 define over the prior art.

II. Rejection of claims 5, 11, 27, 34, and 42 under 35 U.S.C. §103(a).

Claims 5, 11, 27, 34, and 42 stand rejected under 35 U.S.C. §103(a) for obviousness over United States Publication No. 2001/0037255 to Tambay in view of United States Patent No. 5,974,388 to Durham in view of United States Patent No. 6,959,284 to Howes. Reversal of this rejection is respectfully requested.

The Howes patent is relied upon for teaching the use of a printer as an output device, per claim 5. That teaching does not cure the deficiencies of the Tambay publication and the Durham patent, which provide no reason to practice the claimed system. Likewise, as to claims 11, 27, 34, and 42, the Howes patent is

relied upon for teaching a feature (quality grading) that does not account for the failure of the Tambay publication and the Durham patent to render obvious the subject matter thereof. Therefore, claims 5, 11, 27, 34, and 42 define over the prior art.

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CONCLUSION

For the reasons set forth above, Appellant believes claims 1-8, 11-18, 20-24, 27, 29-31, 34-35, 37-39, 42-43, and 45-49 are patentable over the cited art and are in condition for allowance. Reversal of all of the Examiner's rejections and allowance of these claims are respectfully requested.

The Commissioner of Patents and Trademarks is hereby authorized to charge the fee of \$ 540.00 by credit card, which information accompanies this Appeal Brief. The Commissioner of Patents and Trademarks is hereby authorized to charge any additional fees which may be required to Deposit Account Number 23-0650. Please refund any overpayments to Deposit Account Number 23-0650.

Respectfully submitted,

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CLAIMS APPENDIX

1. A computer based system for illustrating product data comprising:

- (a) an input interface wherein a user selects one or more products;
- (b) at least one database comprising product data of the products;
- (c) a program in communication with the input interface and the at least one database, wherein the program retrieves selected product data for products selected by the user; and
- (d) an output interface in communication with the program, which outputs and illustrates at least some of the selected product data retrieved from the database,

wherein the computer based system is interactive with the user, such that the user may adjust at least some of the product data retrieved from the database and illustrated in the output interface to generate additional product data, wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one of more of a code, a description, a price and a package size.

2. The system of claim 1, wherein the program communicates with the input interface, the database, and the output interface via a communication media comprising one or more types of computer networks.

3. The system of claim 1 further comprising a maintenance interface in communication with the database.

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4. The system of claim 1 further comprising an output device in communication with the output interface.

5. The system of claim 4, wherein the output device is selected from the group consisting of a printer, a fax machine, a diskette and a compact disc.

6. The system of claim 1, wherein the user selects at least two products.

7. The system of claim 1, wherein the input interface comprises a plurality of input screens.

8. The system of claim 6, wherein the products comprise coatings.

9. Cancelled.

10. Cancelled.

11. The system of claim 1, wherein the description designates a quality grade of the coating.

12. The system of claim 1, wherein the input interface comprises a product search tool.

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13. The system of claim 12, wherein the search tool comprises a list of product suppliers and brands.

14. The system of claim 13, wherein the search tool comprises a list of paint lines.

15. The system of claim 14, wherein the search tool comprises a list of product mix categories.

16. The system of claim 15, wherein the search tool comprises a list of products.

17. The system of claim 1, wherein the program resides on a server.

18. The system of claim 1, wherein the database comprises product data for a plurality of products of a plurality of product suppliers.

19. Cancelled.

20. The system of claim 1, wherein system is capable of generating a report that illustrates the contents of the output interface.

21. A computer-generated report illustrating the contents of an output interface, wherein the report comprises selected product data of one or more products, wherein the product data is retrieved from at least one database comprising product data of one or more products and outputted via the output interface, and wherein at least some of the product data retrieved from the database and illustrated in the output interface is adjustable in the output interface to generate additional product data, wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one or more of a code, a description, a price and a package size.

22. A document comprising the report of claim 21.

23. The report of claim 21, wherein the report comprises selected product data of at least two products.

24. The report of claim 23, wherein the products comprise coatings.

25. Cancelled.

26. Cancelled.

27. The report of claim 21, wherein the description designates a quality grade of the coating.

28. Cancelled.

29. A computer-based method for generating a report comprising product data of one or more products, the method comprising the steps of:

(a) receiving a selection of one or more products from a user via an input interface;

(b) retrieving product data of the one or more products from at least one database comprising product data of one or more products;

(c) outputting and illustrating selected product data of the one or more products in an output interface,

wherein at least some of the illustrated product data retrieved from the database and illustrated in the output interface is adjustable by the user in the output interface to generate additional product data, wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one or more of a code, a description, a price and a package size; and

(d) generating a report that illustrates the contents of the output interface.

30. The method of claim 29, wherein step (a) comprises receiving a selection of at least two products from a user.

31. The method of claim 29, wherein the products comprise coatings.

32. Cancelled.

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33. Cancelled.

34. The method of claim 33, wherein the description designates a quality grade of the coating.

35. The method of claim 29, wherein the input interface comprises a plurality of input screens.

36. Cancelled.

37. The method of claim 29, further comprising: (e) delivering the contents of the report to an output device to produce a document illustrating the report.

38. A method of using a computer to compare product data, the method comprising the steps of:

(a) using a computer-based input interface to input a selection of at least two products to be compared; and

(b) reviewing an output interface illustrating selected product data of the at least two products, wherein the selected product data is retrieved from at least one database comprising product data of at least two products and outputted via the output interface,

wherein at least some of the illustrated selected product data retrieved from at least one database is adjustable by the user in the output interface, wherein the adjustable product data comprises one or more of a component mixing ratio, a RTS price and coating component data comprising one or more of a code, a description, a price and a package size.

39. The method of claim 38, further comprising: (d) generating a report that illustrates the contents of the output interface.

40. Cancelled.

41. Cancelled.

42. The method of claim 38, wherein the description designates a quality grade of the coating.

43. The method of claim 38, wherein the input interface comprises a plurality of input screens.

44. Cancelled.

45. The method of claim 38, further comprising: (e) delivering the contents of the report to an output device to produce a document illustrating the report.

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46. The computer based system of claim 1 for illustrating product data further comprising:

competitive products, said competitive products competing with said one or more user selected products, said program retrieves some selected product data for competitive products and said output interface outputs and illustrates at least some of the selected product data of competitive products concurrent with said selected product data of said products selected by the user.

47. The report of claim 21, wherein the report further comprises:

product data of competitive products, said competitive products competing with said one or more products, and said output interface outputs and illustrates at least some of the product data of competitive products concurrent with said selected product data of said products.

48. The method of claim 29, wherein said product data of step (c) further comprises product data of competitive products, said competitive products competing with said one or more selected products.

49. The method of claim 38, wherein at least one product data is for a competitive product.

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EVIDENCE APPENDIX

None.

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Docket No. 1913A1 (Attorney Docket 3152-080249)

RELATED PROCEEDING APPENDIX

None.